

mandatory assessment of late fees for a failure to timely file certain documents.¹³ The late fees are automatically imposed and assessed on a per-day basis for a period of not more than 10 business days. Late fees are administrative rather than disciplinary in nature. NASD staff, however, may institute disciplinary proceedings concerning late filings if the circumstances so warrant. Currently, Schedule A, Section 4, Paragraph (l)(3) designates FOCUS reports and annual audit reports as documents that are eligible for the late fee provision.¹⁴ Specifically, this late fee provision applies to "SEC Rule 17a-5—monthly and quarterly FOCUS reports and annual audit reports." For the same reasons stated above, the NASD proposes to amend Schedule A to make clear that a member may be assessed a late fee for failing to timely file Schedule I of the FOCUS report.

2. Statutory Basis

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,¹⁵ which requires, among other things, that the NASD's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The NASD believes that this proposed rule change is necessary to clarify that a failure to timely file Schedule I is included in the NASD's MRVP and late fee provision under Schedule A.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments were neither solicited nor received.

¹³ See Securities Exchange Act Release No. 44512 (July 3, 2001), 68 FR 36812 (July 13, 2001).

¹⁴ Schedule A, Section 4, Paragraph (b)(2) contains a separate late fee provision for late filings of the Uniform Termination Notice for Security Industry Registration ("Form U-5"). Unlike the late fee provision in paragraph (l), the Form U-5 late fee provision provides for a one-time assessment of a late fee.

¹⁵ 15 U.S.C. 78o-3(b)(6).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change is effective pursuant to Section 19(b)(3)(A)(i) of the Act¹⁶ and subparagraph (f)(1) of Rule 19b-4 thereunder,¹⁷ in that the foregoing proposed rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the self-regulatory organization. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR-NASD-2003-148 and should be submitted by November 13, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁸

Margaret H. McFarland,

Deputy Secretary.

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¹⁶ 15 U.S.C. 78s(b)(3)(A)(i).

¹⁷ 17 CFR 240.19b-4(f)(1).

¹⁸ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48651; File No. SR-NASD-2003-07]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Amend Rules 1011, 1014 and 1017

October 17, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on January 17, 2003, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD.³ On September 17, 2003, NASD filed Amendment No. 1 to the proposed rule change.⁴ On October 16, 2003, NASD filed Amendment No. 2 to the proposed rule change.⁵ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Below is the text of the proposed rule change. Proposed new language is in *italics*; proposed deletions are in [brackets].

* * * * *

1010. Membership Proceedings

1011. Definitions

- (a) No Change.
- (b) "Associated Person"

[The term "Associated Person" means: (1) A natural person registered under the Rules of the Association; or (2) a sole proprietor, partner, officer, director, branch manager, or other natural person occupying a similar status or performing similar functions who will be or is anticipated to be

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Commission staff made certain typographical changes to this Notice with the consent of NASD. Telephone conversation between Kosha K. Dalal, Assistant General Counsel, NASD, and Andrew Shipe, Special Counsel, Division of Market Regulation ("Division"), Commission, September 23, 2003.

⁴ See letter from Kosha K. Dalal, Assistant General Counsel, NASD, to Katherine England, Assistant Director, Division of Market Regulation, Commission, dated September 16, 2003.

⁵ See letter from Kosha K. Dalal, Assistant General Counsel, NASD, to Katherine England, Assistant Director, Division of Market Regulation, Commission, dated October 15, 2003.